CASE SUMMARY

Complaint against the Lands Department for delay and mishandling of the applications for change of trade and change of tenancy in respect of a Short Term Tenancy.

The Complaint

The complainant applied to a District Lands Office (DLO) of the Lands Department (Lands D) for change of trade and change of tenancy to his daughter in respect of his Short Term Tenancy (STT) on five occasions between April 1991 and January 1996, some of these applications were mishandled by the DLO, resulting in delay in processing of his applications.

Opinions and Conclusion

2. The complainant submitted an application letter to the DLO in April 1991 for change of trade from rattan factory to metal factory and received an acknowledgment card from the DLO. However, the DLO allegedly said that they had no record of the application or the acknowledgment thereof. This Office considers the acknowledgment card as proof of receipt of the application by the DLO and that the DLO had mishandled the complainant's application of April 1991 through loss or misplacement for reasons which cannot be ascertained now.

3. In February 1993, the complainant wrote to the DLO enquiring about the progress of his application of April 1991 and seeking the grant of a new STT on a piece of adjoining government land. After an interview by DLO staff, his application was rejected in June 1993 on planning and policy grounds. This Office considers that the DLO had not taken an unreasonably long time in processing this application.

4. In April 1994, the complainant applied again to the DLO for change of tenancy to his daughter. After preliminary inquiry, DLO posted notice in June 1994 regarding the application. No objection was received upon the expiry of the 14-day objection period. As the complainant and his daughter were unable to confirm the usage of the site, they were requested to give the DLO a written confirmation before the matter could be further considered. This Office considers that up to that stage, the DLO had acted reasonably in handling the application.

5. In response to the DLO's request for a written confirmation of site usage, the complainant wrote again in August 1994 applying for change of trade to retail of autoparts and change of tenancy to his daughter, confirming that the use of the site for storage was only temporary. In the same letter, he also complained about different treatments by the DLO in respect of two other cases. From September 1994 to January 1996, no action was taken by

the DLO on this application apart from obtaining the zoned area number on the outline zoning plan (OZP) in respect of the STT. The DLO claimed that the office treated the letter as a complaint rather than an application and had concentrated on chasing the complainant to settle the outstanding tenancy fee between January and November 1995. This Office considers it unacceptable for the DLO to treat the complainant’s letter of August 1994 as merely a complaint in view of the complainant’s clearly stated wish to apply for a change of trade and a change of tenancy.

6. This Office notes from the case file that the DLO had dealt with the tenancy payments only in January 1995 and during a period from September to late November 1995. If outstanding payment of the tenancy fee was a crucial factor in considering the complainant’s application, the DLO should have so advised him from the outset. As regards the complaint of different treatment, the DLO admitted that the complaint was not properly dealt with in accordance with their guidelines and procedures. Considering the above factors, this Office considers that DLO mishandled the application of August 1994.

7. In January 1996, DLO staff conducted a site visit and requested the complainant to confirm the use of the site. In response, the complainant forwarded an application letter in January 1996 for change of trade to workshop for autoparts, metals and machinery repair and for change of tenancy to his daughter. This Office notes that DLO’s action in response to this application was more comprehensive than previously, this included obtaining survey details, checking on the resumption clearance programme, circulation of the application to the concerned government departments for comments and posting of public notice. Among the departments consulted, the Planning Department did not support the application because the proposed use was not in line with the ‘Green Belt’ zoning. A District Board (DB) Member expressed concern in a letter to the DLO in September 1996 over the environmental impacts of the proposed use, but DLO mistakenly treated this as an objection and did not notify the complainant of this ‘objection’ until September 1998 after a lapse of two years. Instead of conducting an investigation, DLO asked the complainant to resolve the objection himself before his application could be further considered.

8. This Office is of the opinion that the DLO had acted inappropriately in the following three aspects in handling the complainant’s application of January 1996 -

(a) when the Planning Department did not support the application, the DLO should have informed the complainant in the first instance because if the proposed use was not permitted in the zoning, there would have been no point in proceeding further with the application;

(b) the DLO should have informed the complainant of the DB Member’s objection shortly after it was received in September 1996 and not two years afterwards if the resolution of the

objection was necessary for the further processing of his application;

(c) the DLO had failed to act in accordance with their departmental procedures in dealing with the objection from the DB Member.

9. All points considered, The Ombudsman concludes that this complaint is **substantiated.**

Recommendations

10. The Ombudsman recommends the Director of Lands to consider-

(a) expediting action to process the complainant’s application for change of trade and change of tenancy;

(b) issuing a letter of apology to the complainant;

(c) revamping the filing system in the DLO to ensure properly recording and filing of correspondence and to institute a proper Bring Up (BU) system;

(d) reminding the DLO of the need to ensure consistency in handling applications for change of trade and change of tenancy in accordance with the departmental guidelines and procedures;

(e) reminding the DLO of the need to comply with the internal guidelines and procedures in handling complaints and objections.

Response from the Director of Lands

11. The Director of Lands (D of L) shares the points raised in para.8 and has agreed to act on the recommendations in para. (10)(a), (c), (d) and (e) above. However, he considers the issue of a letter of apology inappropriate because the complainant had not paid the rental and could not expect his application to be processed, and the DLO had concentrated on chasing the complainant for the outstanding rental.

Final Remarks

12. The Ombudsman is glad to note the positive response from the D of L to the recommendations in para. 10(a), (c), (d) and (e). However, this Office maintains the view that a written apology is fully justified because the complaint was substantiated on the basis of the mishandling by the DLO of not only the complainant’s application in August 1994 but also his other applications of April 1991 and January 1996, which had caused delay and inconvenience to him. Besides, the DLO should have at least informed the complainant that his application would not be further processed if he did not promptly pay the outstanding tenancy fee. Having reviewed the matter, The

Ombudsman maintains the view that a written apology to the complainant is considered fully justified.

Office of The Ombudsman
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